

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
LAS CRUCES DIVISION

UNITED STATES OF AMERICA,)	CASE NOS: 2:10-CR-00130-JAP
)	2:09-MJ-01582-KBM
Plaintiff,)	
)	CRIMINAL
vs.)	
)	Las Cruces, New Mexico
CARL EMANUEL HAESE,)	
)	Friday, January 15, 2010
Defendant.)	(10:41 a.m. to 11:00 a.m.)

PLEA HEARING

BEFORE THE HONORABLE KAREN B. MOLZEN,
CHIEF UNITED STATES MAGISTRATE JUDGE

Appearances:	See Next Page
Clerk:	Becky Wilson
Transcribed by:	Exceptional Reporting Services, Inc. P.O. Box 18668 Corpus Christi, TX 78480-8668 361 949-2988

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

EXCEPTIONAL REPORTING SERVICES, INC

APPEARANCES FOR:

Plaintiff:

MARK A. SALTMAN, ESQ.
Assistant United States Attorney
555 S. Telshor
Suite 300
Las Cruces, NM 88011

ANDREA W. HATTAN, ESQ.
Assistant United States Attorney
555 S. Telshor
Suite 300
Las Cruces, NM 88011

Defendant:

JESS R. LILLEY, ESQ.
Lilley Law Office
1020 S. Main Street
Las Cruces, NM 88005

1 Las Cruces, New Mexico; Friday, January 15, 2010; 10:41 a.m.

2 (Call to Order)

3 **THE COURT:** Let's go on ahead and take -- you guys
4 probably want me to take the juvenile first.

5 **MR. SPEAKER:** It doesn't matter.

6 **THE COURT:** Doesn't matter, then let's go on ahead
7 and take the felony plea. That's in 09-1582-mj, Carl -- is it
8 Haysee (phonetic)?

9 **MR. LILLEY:** Haese.

10 **THE COURT:** And I'm sorry, I couldn't hear you.

11 **MR. LILLEY:** Haese.

12 **THE COURT:** Haese, all right.

13 **MR. SALTMAN:** Good morning, your Honor. Mark Saltman
14 for the Government with Andrea Hattan.

15 **MR. LILLEY:** Morning, Judge. Jess Lilley on behalf
16 of Carl Haese.

17 **THE COURT:** All right, Mr. Haese, if you would raise
18 your right hand, please, I'm going to place you under oath. Do
19 you solemnly swear that your testimony today in Court will be
20 the truth, the whole truth, and nothing but the truth, so help
21 you God?

22 **THE DEFENDANT:** I do.

23 **THE COURT:** All right. Now that you're under oath,
24 you must tell me the truth or you could be prosecuted for
25 perjury or making a false statement.

1 **THE DEFENDANT:** Yes, ma'am.

2 **THE COURT:** It's important that you understand
3 everything that's happening today. If you have any questions
4 at all, please ask me to explain more fully or ask for some
5 more time to talk to Mr. Lilley. All right, and I will need
6 you to speak up into that microphone. You might want to aim it
7 closer to you there. Sir, first of all, Mr. Lilley tells me
8 you want to plead guilty to this charge in the information. I
9 need to make sure you understand that you have the right to
10 have your guilty plea taken by a higher district judge who has
11 been appointed for life. I'm a magistrate judge appointed for
12 an eight-year term. If you prefer a district judge, that's
13 fine, but we would need to reschedule for another day. One is
14 not available. Are you instead willing to let me preside?

15 **THE DEFENDANT:** Yes, ma'am.

16 **THE COURT:** Okay. Also, you have the right to plead
17 guilty to a charge that comes in the form of a Grand Jury
18 indictment. Now, the Grand Jury is a group of not less than 16
19 ordinary people, and they could only formally charge you in a
20 Grand Jury indictment if, after looking at the evidence, at
21 least 12 of those grand jurors were convinced that you probably
22 committed this crime. Your case has not been presented to the
23 Grand Jury so we don't have an indictment for you to plead
24 guilty to. The only way I can take your plea today is if
25 you're willing to instead plead to a different kind of charge

1 known as an information. That's a charge filed by the United
2 States Attorney's Office. Are you willing to plead to an
3 information rather than a Grand Jury indictment?

4 **THE DEFENDANT:** Yes, your Honor.

5 **THE COURT:** Okay. Sir, what is your full name?

6 **THE DEFENDANT:** Carl Emanuel Haese.

7 **THE COURT:** And your age?

8 **THE DEFENDANT:** Thirty-three

9 **THE COURT:** And how far did you go in school?

10 **THE DEFENDANT:** University graduate.

11 **THE COURT:** Okay, where was that?

12 **THE DEFENDANT:** Several different universities, your
13 Honor. I've got a Bachelor's from Ashwood University, I've got
14 three different medical from Caribbean to China to Ecuador.

15 **THE COURT:** And what kind of medical degrees are
16 those?

17 **THE DEFENDANT:** Naturopathic.

18 **THE COURT:** Okay. Now, let's see, do you have a drug
19 or alcohol addiction?

20 **THE DEFENDANT:** No, ma'am.

21 **THE COURT:** Today are you under the influence of
22 drugs, medicines, or alcohol?

23 **THE DEFENDANT:** No, your Honor.

24 **THE COURT:** And do you have a physical or mental
25 illness that could impair your ability to understand what's

1 happening?

2 **THE DEFENDANT:** No, your Honor.

3 **THE COURT:** Have you received a copy of the
4 information that's charged?

5 **THE DEFENDANT:** Yes, ma'am.

6 **THE COURT:** And do you understand that this
7 information alleges that you -- let's see -- committed wire
8 fraud?

9 **THE DEFENDANT:** Yes, your Honor.

10 **THE COURT:** I'm just getting it down to the basic
11 term. Do you understand the elements of that charge that the
12 Government --

13 **THE DEFENDANT:** Yes, your Honor.

14 **THE COURT:** -- would have to prove? Willing to waive
15 formal reading, Mr. Lilley?

16 **MR. LILLEY:** Yes, ma'am.

17 **THE COURT:** What are the maximum penalties that Mr.
18 Haese faces if he's found guilty?

19 **MR. SALTMAN:** Your Honor, if Mr. Haese is found
20 guilty of the charge, he faces imprisonment for a period of not
21 more than 20 years, a fine not to exceed \$250,000, a mandatory
22 term of supervised release of not less than three years, and a
23 special penalty assessment of \$100.

24 **THE COURT:** All right, do you understand those
25 maximum statutory penalties?

1 **THE DEFENDANT:** Yes, your Honor.

2 **THE COURT:** All right. Now, I don't believe this is
3 an 11(c)(1)(C), is it?

4 **MR. SALTMAN:** It is not, Judge.

5 **THE COURT:** All right. I want to make sure that you
6 understand that there will also be other consequences that flow
7 from pleading guilty. You're a citizen of the United States?

8 **THE DEFENDANT:** Yes, your Honor.

9 **THE COURT:** If you plead guilty, you'll stand as a
10 convicted felon and you'll lose valuable civil rights,
11 including the right to vote, the right to hold public office,
12 the right to serve as a juror, and the right to possess any
13 kind of firearm, ammunition, explosive device, or body armor.
14 Do you understand that loss of civil rights?

15 **THE DEFENDANT:** Yes, your Honor.

16 **THE COURT:** Also, as a convicted felon you will have
17 a criminal history and that history can be used to enhance your
18 punishment if you are convicted of another crime in the future;
19 do you understand that?

20 **THE DEFENDANT:** Yes, your Honor.

21 **THE COURT:** If after you are sentenced to a term of
22 imprisonment -- you will be placed on a term of supervised
23 release by the district judge. And the terms of those -- of
24 that supervised release you must be in compliance with at all
25 times. If you violate any of those conditions for supervised

1 release, you could go back to prison and a whole new term of
2 supervised release be imposed; are you aware of that?

3 **THE DEFENDANT:** Yes, ma'am.

4 **THE COURT:** Also, we don't have parole in the federal
5 system. You will serve at least 85 percent of any time that
6 you are sentenced to as far as incarceration; do you understand
7 that?

8 **THE DEFENDANT:** Yes, your Honor.

9 **THE COURT:** All right, you will also be giving up any
10 kind of defense that you could have raised in these
11 proceedings. You'll not be able to argue that you were
12 illegally arrested or that any of the evidence against you was
13 illegally obtained; do you understand that?

14 **THE DEFENDANT:** Yes, your Honor.

15 **THE COURT:** Okay. You also will not be able to argue
16 that you are innocent of this offense; do you understand that?

17 **THE DEFENDANT:** Yes, your Honor.

18 **THE COURT:** Now, with regard to that maximum
19 sentence, I believe you said 20 years?

20 **MR. SALTMAN:** Yes, your Honor.

21 **THE COURT:** The judge who sentences you is going to
22 have a great deal of discretion in deciding what the
23 appropriate sentence should be, and the judge can sentence you
24 all the way up to that 20 years of incarceration if that would
25 be a reasonable sentence; do you understand that?

1 **THE DEFENDANT:** Yes, your Honor.

2 **THE COURT:** Have you talked to Mr. Lilley about the
3 federal sentencing guidelines and how they might apply in your
4 case?

5 **THE DEFENDANT:** Yes, your Honor.

6 **THE COURT:** Those federal sentencing guidelines are
7 advisory only, but they do carry a great deal of weight. In
8 fact, the district judge is required to consult the guidelines,
9 perform the calculations, determine the applicable guideline
10 range, and explain the reason for the sentence that is imposed;
11 do you understand that?

12 **THE DEFENDANT:** Yes, your Honor.

13 **THE COURT:** Usually a judge will sentence within the
14 applicable guideline range. But there are times that a judge
15 will depart upwards or downwards and that will be upheld as
16 long as it is a reasonable sentence; do you understand that?

17 **THE DEFENDANT:** Yes, your Honor.

18 **THE COURT:** Okay. Now, Mr. Lilley I know will have
19 given you his best estimate of how those guidelines will apply
20 in your case, but that's all it is is an estimate.

21 **THE DEFENDANT:** Yes, ma'am.

22 **THE COURT:** There are no guarantees; and even if
23 you're sentenced to more time than you're expecting or
24 different fine, whatever, you have to understand that you
25 cannot withdraw your plea on that basis.

1 **THE DEFENDANT:** Yes, ma'am.

2 **THE COURT:** All right, let's talk about this written
3 plea agreement. Did you read through it before you signed it?

4 **THE DEFENDANT:** Yes, your Honor.

5 **THE COURT:** And that is your signature at the back?

6 **THE DEFENDANT:** Yes, your Honor.

7 **THE COURT:** And did you discuss all of its terms with
8 Mr. Lilley?

9 **THE DEFENDANT:** Yes, your Honor.

10 **THE COURT:** Let's go through it just carefully. In
11 here you do make a statement with regard to your admission of
12 facts for a factual basis. I'm still going to ask that I get a
13 factual basis today independent of that. And then -- let's see
14 -- has Mr. Haese, has he retained the right to ask the judge to
15 depart downwards?

16 **MR. LILLEY:** Yes, we have, Judge.

17 **THE COURT:** Okay.

18 **MR. LILLEY:** There's no downward (indiscernible)

19 **THE COURT:** Okay. Now, in addition to reserving that
20 right, you have certain stipulations with the Government.

21 First, that there should be basically a three-level reduction
22 for your acceptance of responsibility. You and the Government
23 stipulate that there should be an eight-level enhancement and -
24 - pursuant to 2B1.1(b)(1)(E). What's that basis for an eight?

25 **MR. LILLEY:** That's restitution amount.

1 **THE COURT:** All right. The parties stipulate to a
2 two-level enhancement pursuant to Section 2B1.1(b)(2)(A).

3 **MR. LILLEY:** It's the number of victims.

4 **THE COURT:** Okay, and what is the number of victims
5 in this case?

6 **MR. LILLEY:** The stipulation here is to I think over
7 ten.

8 **THE COURT:** Okay. And you agree to pay a fine in the
9 amount of \$10,000. And, notwithstanding your guilty plea to
10 one discreet count of wire fraud involving one victim, you
11 agree to pay full restitution to all victims of your wire fraud
12 scheme in an amount to be determined at sentencing.

13 **MR. LILLEY:** Correct.

14 **THE COURT:** All right, is that your understanding of
15 the stipulations that you have with the Government?

16 **THE DEFENDANT:** Yes, your Honor.

17 **THE COURT:** Now, those stipulations are not binding
18 on the judge who sentences you. The judge can reject one or
19 all of those stipulations and you still could not withdraw your
20 plea of guilty; do you understand that?

21 **THE DEFENDANT:** Yes, ma'am.

22 **THE COURT:** You're also giving up your right to
23 appeal the judge's rejection of any of those stipulations, as
24 well as giving up your right to appeal the sentence that is
25 ultimately imposed. Do you understand that waiver of your

1 appeal rights?

2 **THE DEFENDANT:** Yes, your Honor.

3 **THE COURT:** And are you aware that such waivers are
4 enforced by the higher courts?

5 **THE DEFENDANT:** Yes, ma'am.

6 **THE COURT:** Okay. Has anyone made any promises or
7 assurances to you that are not contained in this written plea
8 agreement?

9 **THE DEFENDANT:** No, your Honor.

10 **THE COURT:** Okay, so this agreement contains all of
11 the promises; is that right?

12 **THE DEFENDANT:** Yes, ma'am.

13 **THE COURT:** Okay. And, counsel, have I accurately
14 stated everything?

15 **MR. SALTMAN:** Yes, your Honor. I did represent to
16 defense counsel that at sentencing I would be asking for a
17 sentence at the low end of the guideline range.

18 **THE COURT:** All right. Thank you for putting that on
19 the record. Okay. Now, Mr. Haese, you do have the right to
20 plead not guilty and persist in that plea and proceed to a
21 trial -- jury trial. At that trial, you would be presumed
22 innocent and you would have the assistance of your lawyer. If
23 you couldn't afford an attorney, one would be appointed for you
24 to represent you. Are you retained at this point, Mr. Lilley?

25 **MR. LILLEY:** Yes, Judge.

1 **THE COURT:** Okay. Do you understand that right, sir?

2 **THE DEFENDANT:** Yes, ma'am.

3 **THE COURT:** Also, at that trial you could compel
4 witnesses to come and testify under oath pursuant to a
5 subpoena. You would be able to see and hear all of the
6 witnesses when they testified, and Mr. Lilley would be able to
7 cross examine all of the witnesses while they were under oath.
8 The Government could not force you to testify at the trial and
9 your silence could not be used as evidence against you, but it
10 would be your choice to make whether to take the stand and
11 testify on your own behalf. You have that right.

12 **THE DEFENDANT:** Yes, ma'am.

13 **THE COURT:** You could not be convicted unless the
14 Government proved your guilty beyond a reasonable doubt as to
15 all of the elements that make up this offense. Your trial
16 would be to a jury of 12 and the jury's verdict would have to
17 be unanimous. Do you understand all of that?

18 **THE DEFENDANT:** Yes, your Honor.

19 **THE COURT:** Do you understand that by pleading guilty
20 today, you will be giving up that trial and those rights that
21 come with that trial?

22 **THE DEFENDANT:** Yes, ma'am.

23 **THE COURT:** Okay. Have you had enough time to talk
24 to Mr. Lilley --

25 **THE DEFENDANT:** Yes, ma'am.

1 **THE COURT:** -- about the charge and any possible
2 defense you may have?

3 **THE DEFENDANT:** Yes, your Honor.

4 **THE COURT:** And has he been able to answer all of
5 your questions?

6 **THE DEFENDANT:** Yes, ma'am.

7 **THE COURT:** Are you satisfied with his advice and
8 representation?

9 **THE DEFENDANT:** Yes, your Honor.

10 **THE COURT:** Is anyone pressuring you or forcing you
11 to plead guilty?

12 **THE DEFENDANT:** No, ma'am.

13 **THE COURT:** Are you doing this voluntarily?

14 **THE DEFENDANT:** Yes, ma'am.

15 **THE COURT:** All right, I'm going to ask you to listen
16 carefully. What would the Government be able to prove if this
17 matter proceeded to a trial?

18 **THE DEFENDANT:** With regard to the charge in the
19 information, your Honor, the evidence is that in August, 2008,
20 Mr. Haese was operating a medical clinic in Las Cruces called
21 the Haese Clinic of Integrated Medicine. And on or about
22 October 15th, 2008, a Lyme Disease patient named Todd Stockton
23 (phonetic) contacted the clinic because Mr. Stockton had heard
24 that Mr. Haese had a cure for Lyme Disease. During telephone
25 conversations, Mr. Haese told Mr. Stockton that he did have a

1 cure for Lyme Disease and he had treated people for Lyme
2 Disease, that he had a 100 percent success rate for everybody
3 that he had treated. That representation was false. Mr. Haese
4 had treated several people for Lyme Disease with varying
5 results. Some of those results had been successful, others far
6 from successful. In fact, some people had even contacted the
7 Mexico Board of Pharmacy to complain about complications they
8 were experiencing as a result of their Lyme Disease treatment.
9 In furtherance of that fraudulent statement, Mr. Haese
10 convinced Mr. Stockton that he had this fail-safe cure for Lyme
11 Disease. Mr. Stockton signed up to receive the treatment, paid
12 Mr. Haese in excess of \$5,000 with a credit card. That credit
13 card transaction was initiated at the Haese Clinic here in Las
14 Cruces and processed by a bank in North Carolina, so it crossed
15 interstate lines for purposes of the wire fraud statute.

16 **THE COURT:** All right. And I know your plea
17 agreement calls for restitution. I just need to make sure that
18 you understand that is one of the consequences of pleading
19 guilty is restitution.

20 **THE DEFENDANT:** Yes, your Honor.

21 **THE COURT:** All right. Mr. Haese, having listened to
22 counsel, how do you plead to this charge, guilty or not guilty?

23 **THE DEFENDANT:** Guilty, your Honor.

24 **THE COURT:** All right. Can you tell me in your own
25 words what you did that makes you guilty of this crime?

1 **THE DEFENDANT:** I misrepresented the outcome of
2 treatment to Mr. Stockton.

3 **THE COURT:** All right, and tell me precisely how you
4 did that.

5 **THE DEFENDANT:** Mr. Stockton heard about my clinic
6 from unknown sources to me, contacted me, asked me about the
7 overall treatment, what it consisted of, what it included, told
8 me about his case, came into the office, provided us with all
9 of his medical history. Based on his medical history, based on
10 where he currently was health wise, I had assured Mr. Stockton
11 that I thought that he would do well with the treatment and I
12 told him that I thought that he would be within my success
13 rate.

14 **THE COURT:** And did you misrepresent the success rate
15 that you've had?

16 **THE DEFENDANT:** Yes, ma'am.

17 **THE COURT:** All right. And then he paid you \$5,000;
18 is that right?

19 **THE DEFENDANT:** Yes, ma'am.

20 **THE COURT:** And did that transaction occur with a
21 credit card?

22 **THE DEFENDANT:** Yes, ma'am, it did.

23 **THE COURT:** All right. And you admit that that was a
24 wire transfer, basically some kind of --

25 **THE DEFENDANT:** Yes, ma'am, apparently so.

1 **THE COURT:** -- connection on the wires? And you knew
2 that that was a misrepresentation at the time that you made it?

3 **THE DEFENDANT:** Yes, ma'am.

4 **THE COURT:** Okay. Anything else you want me to ask?

5 **MR. SALTMAN:** No, your Honor, I believe that's --

6 **MR. LILLEY:** No, your Honor.

7 **THE COURT:** All right, so basically is everything
8 that Mr. Saltman said true?

9 **THE DEFENDANT:** Yes, ma'am.

10 **THE COURT:** Then it is the finding of the Court that
11 the Defendant, Carl Emanuel Haese, is fully competent and
12 capable of entering an informed plea, he's aware of the nature
13 of the charge and consequences of the plea, and this plea of
14 guilty is knowing, it's voluntary, and it is supported by an
15 independent basis in fact that contains all of the elements of
16 the offense. I accept your plea and now adjudge you guilty of
17 that crime. I'm deferring acceptance of the plea agreement.
18 That's going to be up to the district judge who sentences you.
19 You're going to be meeting with Probation, and Mr. Lilley will
20 be with you. You'll provide information for a presentence
21 report.

22 **THE DEFENDANT:** Yes, ma'am.

23 **THE COURT:** After it's prepared, he'll review it with
24 you and file any objections you may have to that report.

25 **THE DEFENDANT:** Yes, ma'am.

1 **THE COURT:** When you do appear for sentencing, both
2 you and Mr. Lilley will be able to speak on your behalf. I'm
3 anticipating it will be about 90 days before you get to
4 sentencing.

5 **THE DEFENDANT:** Yes, ma'am.

6 **THE COURT:** Now, I previously had him out I believe
7 on his own --

8 **MR. LILLEY:** I think it was a \$5,000 unsecured bond,
9 Judge.

10 **THE COURT:** Was it \$5,000 unsecured?

11 **MR. LILLEY:** Yes, Judge.

12 **THE COURT:** And I did see there -- is this a new
13 presentence -- or Pretrial Services --

14 **MR. SPEAKER:** Well, what happened your Honor --

15 **THE COURT:** Yes?

16 **MR. SPEAKER:** -- if I can explain what -- you
17 actually release him first --

18 **THE COURT:** Yes.

19 **MR. SPEAKER:** -- and then all he has (indiscernible)

20 **THE COURT:** Okay, all right. So any objection to
21 those conditions for release remaining in effect?

22 **MR. SALTMAN:** Not at all, your Honor.

23 **MR. LILLEY:** Judge, I know I -- Probation had talked
24 to me prior to and they wanted Mr. Haese to turn over his
25 passport, so we don't have a problem with that. And so I will

1 -- he will drop that off at my office early next week and I
2 will have that hand-delivered to Mr. (indiscernible)

3 **THE COURT:** All right. Do I need to put anything
4 in --

5 **MR. SPEAKER:** No, your Honor --

6 **THE COURT:** -- to modify it?

7 **MR. SPEAKER:** -- if you can just hold that
8 (indiscernible) everything on a receipt.

9 **THE COURT:** All right, let's do it that way then.
10 All right, Mr. Haese, especially now you want to make sure that
11 you don't get in any trouble, don't violate any state, local,
12 or federal laws because you've reserved the right to ask the
13 judge to sentence you as low as possible.

14 **THE DEFENDANT:** Yes, ma'am.

15 **THE COURT:** All right. Don't give him a reason to
16 not do that.

17 **THE DEFENDANT:** Yes, ma'am.

18 **THE COURT:** All right, anything else?

19 **MR. LILLEY:** Judge, do we know who the district judge
20 is assigned?

21 **THE COURT:** No, not yet.

22 **MR. LILLEY:** Not yet, okay.

23 **THE COURT:** I don't think so. Oh, we do now?

24 **THE CLERK:** No, I'm not sure who it will go to.

25 **THE COURT:** We're not sure.

1 **MR. LILLEY:** Okay, we'll find out later. Thank you,
2 Judge.

3 **THE COURT:** Okay, we'll find out later. All right,
4 thank you, sir.

5 **THE DEFENDANT:** All right, thank you.

6 **(This proceeding was adjourned at 11:00 a.m.)**

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

March 30, 2015

TONI HUDSON, TRANSCRIBER